**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 2831 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**NEW ASARWA CHEMICALS PVT. LTD. - Petitioner(s)**
**Versus**
**JAYRAM KANJI & 1 - Respondent(s)**

==========

**Appearance :**
MR RC JANI for Petitioner(s) : 1,
MR UT MISHRA for Respondent(s) : 1 - 2.

==========

**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 27/08/2007**

**ORAL JUDGMENT**

1. Heard Mr.R.C.Jani, learned counsel for the petitioner and Mr.U.T. Mishra, learned counsel for the respondents.

2. The employer – management, being aggrieved by the

award dtd.29/11/2003 passed by the Labour Court, Ahmedabad in Reference (LCA) No.703 of 1995 is before this Court under Article 227 of the Constitution of India with a submission that the order directing reinstatement of the respondents - Jayram Kanji and Somchand Narainsinhbhai, with full back wages and consequential benefits, is illegal.

3. Short facts necessary for disposal of the writ application are that after abolishing two posts of Plant Operator in the establishment, notices were issued to each of the respondent to collect their legal dues, however, the order of retrenchment was challenged before the Labour Court. The workmen submitted before the Labour Court that their removal was contrary to law, firstly because there was no reason to abolish the posts and that the provisions contained in Sec.25(F) of the Industrial Disputes Act were not complied with. Present petitioner, after receiving the notices, appeared before the court and submitted that for the reasons beyond their control, they were required to take decision for abolition of the posts and after such a decision, they issued the notices to each of the respondent for collecting their dues which included retrenchment compensation.

4. Learned court below, after recording evidence and hearing the parties, held that the defenses of the present petitioner was patently illegal, it accordingly made the award in favour of the workmen. Mr.Jani, learned counsel for the petitioner after taking me through the discussion against issue Nos.1 and 3 submitted that the court below was unjustified in holding that the management could not prove reasons on which they defended the retrenchment. He also submitted that the court below was unjustified in holding that the notices issued for compliance of Sec.25(F) of the Industrial Disputes Act was illegal.
5. Learned counsel for the respondent has opposed the writ application.
6. In support of the claim that the Company was unable to meet its both ends and was suffering with financial stringency, present petitioner had filed its yearly balancesheet at Exh.38. Unfortunately, to prove the genuineness and correctness of the said balancesheet, they did not examine either the auditor or the account from their own establishment. Even otherwise, they did not bring any evidence on the record to clarify that what were the reasons beyond their control. On these two

grounds if the court below found that the petitioner establishment has failed in proving the ground for retrenchment, then, I do not think that the findings recorded by the said courts are wrong, bad or perverse.

7. On issue No.3 even if I agree with the learned counsel for the petitioner, then too, the petitioner would not be entitled to any relief.

8. It was then contended that the court below was unjustified in awarding full back wages for the period between removal and retrenchment.

9. Mr.Mishara, learned counsel for the respondents workmen, however, submitted that full back wages must follow the order of reinstatement.

10. Taking into consideration that the termination of each of the employee was set aside on a technical ground, I do not think that each of the employee would be entitled to 100% back wages. In the opinion of this Court, if 50% back wages are allowed in favour of each of the workman commencing from the date of termination till the date of award, the same would meet the ends of justice.

11. In so far as the matter relating to reinstatement, I refuse to interfere, but, however, I direct that the workmen would be entitled to 50% back wages only.

12.The petition is accordingly partly allowed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

rafik